

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

TAGGART BOYD,

Respondent.

8:21CV121

MEMORANDUM AND ORDER

This matter is before the court on the Notice of Appeal (filing 20) and Motion for Leave to Appeal in Forma Pauperis (“IFP”) (filing 21) filed by Petitioner on October 18, 2021. Petitioner seeks to appeal the court’s Memorandum and Order (filing 8) and Judgment (filing 9) entered on June 28, 2021, dismissing Petitioner’s habeas petition with prejudice; the July 28, 2021 Memorandum and Order granting Petitioner leave to appeal IFP in his previous appeal (filing 13); the September 7, 2021 Order (filing 18) denying Petitioner’s “Petition for Permission to Appeal;” and the Judgment (filing 19) issued by the Eighth Circuit Court of Appeals in Petitioner’s previous appeal on September 27, 2021.

A litigant seeking to appeal a judgment must either pay the required filing fees, *see* Fed. R. App. P. 3(e), or proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). “An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The court hereby certifies that the appeal filed by Petitioner in this case is frivolous and not taken in good faith because Petitioner has already prosecuted an appeal to the Eighth Circuit Court of Appeals in which the Court denied a certificate of appealability and dismissed the appeal on September 27, 2021 (filing 19; *see also* filing 25).¹ Since

¹ The Eighth Circuit issued its mandate on October 25, 2021, after Petitioner filed the present Notice of Appeal. (Filing 25.)

the appeal is not taken in good faith, Petitioner cannot file an appeal in forma pauperis. *See* Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3).

IT IS THEREFORE ORDERED that: Petitioner may not proceed on appeal in forma pauperis, and Petitioner's Motion for Leave to Appeal IFP (filing 21) is denied.

Dated this 28th day of October, 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge